

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MICHAEL BRANCH,

Plaintiff,

vs.

Case No. 2:12-cv-13141
Hon. Mark A. Goldsmith
Mag. Michael J. Hluchaniuk

HENRY FORD COMMUNITY COLLEGE and
LISA T. JONES-HARRIS, jointly and severally,

Defendants.

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MOTION TO COMPEL DISCOVERY

Plaintiff, through his attorney Shaun P. Godwin of Godwin Legal Services, P.L.C., hereby
propels his motion and further states as follows:

1. On December 10, 2012, Plaintiff served Plaintiff's First Request for Production on the Defendants. **[Exh. 1]**.
2. On January 9, 2013, Defendants' counsel requested a two week extension from January 9, 2013 to January 23, 2013 to respond, which Plaintiff's counsel granted.

3. On January 23, 2013, Plaintiff received Defendant's Response to Plaintiff's First Request for Production. **[Exh. 2]**.

4. On February 21, 2013, Plaintiff's counsel sent a letter detailing various deficiencies in the response and requesting concurrence in a motion to compel in seven days or, in the alternative, for Defendant's to amend responses and withdrawal objections, produce a privilege log and propose a protective order. **[Exh. 3]**.

5. On February 27, 2013, Defendants' counsel Husband contacted Plaintiff's counsel asking for Plaintiff to hold off on filing a motion to compel and asserting that Defendants' would look into whether additional responsive documents exist and consider other issues raised in the letter including amending answers and a protective order, by the end of the week. **[Exh. 4]**. Defendants' counsel has made no further communication.

6. In regards to Plaintiff's First Request for Production to Defendants number 1, the Plaintiff requested "[a]ll documents described in the Defendants initial disclosures, but not enclosed or attached to the initial disclosures." The Defendants' responded:

See enclosed/attached documents Bates Stamp Numbers 000001- 000033, with the exception of the Henry Ford Community College Office of Campus Safety Preliminary Complaint Report against Michael Branch, dated March 4, 2011. Defendants object to the production of this Report, because it discloses the identity of the complainant, and contains other information that could be used to identify the complainant. This Report will be produced only pursuant to a protective that may require an in camera inspection by the Judge.

The Defendants have since listed the March 4, 2011 Preliminary Complaint against Mr. Branch as an Exhibit. Plaintiff is unaware of any privilege or statute which would prevent disclosure of the name of a person making a complaint. To the extent the Defendants' assert that a protective order is necessary to protect the identity of a person who made a complaint, it is was their responsibility to propose a protective order and/or seek a protective order from the court.

7. In regards to Plaintiff's First Request for Production to Defendants number 3, the Plaintiff requested "[a]ll police reports, supplemental reports, photographs, arrest warrant and return, L.E.I.N records, court records, charging documents, notes, witness statements, jacket of file and any other documents discussing, describing, detailing or otherwise relating to a complaint made regarding Michael Branch on or about March 4, 2011." The Defendants' responded "Defendants have the initial internal complaint only in their possession, which will only be produced pursuant to a protective order, so as to protect the identity of the complainant, which may include an in camera inspection." Plaintiff is unaware of any privilege or statute that would prevent the disclosure of this report. Also, the request when read broadly, as discovery requests must be read, calls for the production of any documents acquired by the Defendants, or their agents, after the initial complaint was made, obtained in the course of the making the decision to expel, during any consideration to reinstate and actions taken by Defendants' to have the Plaintiff barred from the campus. Additional responsive documents must exist.

8. In regards to Plaintiff's First Request for Production to Defendants number 6, the Plaintiff requested "[a]ll documents referencing Michael Branch received or sent by from Defendants Lisa T. Jones-Harris and/or any employee, agent, board member of Henry Ford Community College from 2010 through 2012," Defendants responded:

Defendants object to Request for Production of Documents No.6, because it is vague, overbroad, and unduly burdensome. Defendant objects to the production of correspondence between Ms. Jones-Harris and counsel on the grounds of attorney-client privilege. Without waiving said objection, please see attached documents Bates Stamped Nos 000001 (March 9, 2011 letter), and Nos 000031 - 000033 (ACLU letter).

The request is not vague, overbroad, or unduly burdensome because it is limited to those communication referencing Mr. Branch within a defined time period and restricted to a limited

number of persons. To the extent the Defendants' claim the communications were protected by attorney client privilege the Defendants' were obligated to produce a privilege log.

9. In regards to Plaintiff's First Request for Production to Defendants number 8, the Plaintiff requested "Michael Branch's complete file including, but not limited to, application, disciplinary record, grades, tuition payments, tuition records, reports, financial aid and application, transcripts and academic records." Defendants' produced some documents, but did not produce Mr. Branch's class schedules, the application he submitted, nor any of the underlying documentation related to how the various grades assigned to him for the winter of 2011 were arrived at, which is relevant in that he was unable to complete the semester due to the Defendants' summary expulsion.

10. In regards to Plaintiff's First Request for Production to Defendants number 9, the Plaintiff requested "all admissions policies in effect in 2010." The Defendants' produced a Student Code of Conduct and Due Process Rights document. The response and the documents produced were unresponsive to the request.

11. In regards to Plaintiff's First Request for Production to Defendants number 10, the Plaintiff requested "[a]ll documents concerning student discipline for years 2010 through 2012 issued by any employee, agent, or board member for Defendants Henry Ford Community College and/or Lisa T. Jones-Harris, including but not limited to correspondence and reports." The Defendants' responded:

Defendants object to Request for Production of Documents No. 10, because it seeks documents concerning other students that are protected by FERPA, absent a protective order that may require an in camera inspection. Without waiving said objection, please see attached documents Bates Stamped Nos 000015 - 000026.

To the extent that FERPA applies to the requested documents it is Defendants' responsibility to propose a protective order to Plaintiff's counsel or seek protection from the court.

12. In accordance with Local Rule 7, concurrence with the relief requested in this motion was sought from the Defendants and concurrence was not obtained. **[Exh. 3]**.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter an order requiring Defendants to provide full and complete responses to all of Plaintiff's discovery requests.

Respectfully submitted,

Godwin Legal Services, P.L.C.

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Dated: March 26, 2013

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BRIEF IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL DISCOVERY

This brief is based on the files and records contained herein.

Respectfully submitted,

Godwin Legal Services, P.L.C.

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Dated: March 26, 2013

CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2013, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

- Eileen K. Husband
- Linda Davis Friedland
- Daniel B. Tukul

